THE BOMBAY IRRIGATION ACT, 1879.

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BOMBAY ACT No. VII OF 1879.[1]

[*2nd October, 1879.*]

An Act to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied, in the Bombay Presidency; It is enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called the Bombay Irrigation Act, 1879. Short title.

It extends to the whole of the Presidency of Bombay, except the City of Bombay. Local extent.

Bom. Act V of 1879.

2. In section 55 of the [2]Bombay Land-revenue Code, 1879, for the words " or which has been made available in consequence of the construction, improvement or repair of any irrigational or other work by, or at the instance of, Government," the words " and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879," shall be substituted; Sections 55, 101 and 105 of Bombay Land-revenue Code, 1879, amended.

and in section 101 of the said Code, for the word " leviable " the word " levied " shall be substituted, and the words " or under the Bombay Irrigation Act, 1879," shall be inserted after the figures " 55 ";

and to section 105 of the said Code, the words " or of the Bombay Irrigation Act, 1879," shall be added.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

(1) "canal " includes—

(*a*) all canals, channels, pipes and reservoirs constructed, maintained or controlled by Government for the supply or storage of water;

(*b*) all works, embankments, structures and supply and escape channels connected with such canals, channels, pipes or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;

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[1] For Statement of Objects and Reasons, *see* Bombay Government Gazette, 1878, Pt. V, p. 126; for Report of the Select Committee, *see ibid*, 1870, Pt. V, p. 83; and for Proceedings in Council, *see ibid*, 1879, Pt. V, pp. 3, 115 and 151.

[2] *Supra.*

(*c*) all water-courses, drainage-works and flood embankments as hereinafter respectively defined;

(*d*) any part of a river, stream, lake, natural collection of water or natural drainage-channel, to which the Governor in Council may apply the provisions of section 5, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;

(*e*) all land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated under the orders of Government, for the purposes of such canal;

(2) "water-course" means any channel or pipe not maintained at the cost of Government, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe;

(3) "drainage-work" means any work in connection with a system of irrigation or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section 15 or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith; but does not include works for the removal of sewage from towns;

(4) "flood-embankment" means any embankment constructed or maintained by Government in connection with any system of irrigation or reclamation-works for the protection of lands from inundation or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments;

(5) "Collector" [1]* * * * includes any officer [2]appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act;

(6) "Canal-officer" means any officer lawfully appointed or invested with powers under section 4;

(7) "owner" includes every person having a joint interest in the ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

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[1] The words "means the head revenue-officer of a district and" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), Vol. IV of this Code.

[2] For notification empowering the Colonization Officer, Jamroo Colonization Scheme, to exercise the powers of a Collector, *see* Bombay Government Gazette, 1900, Pt. I, p. 1937.

Appointment of Canal-officers.

4. Government or, subject to such orders as may from time to time be passed by Government, any officer of Government whom the Governor in Council empowers in this behalf, may—

(*a*) appoint[1] such officers with such designations, and assign to them respectively such powers and duties, under this Act, as Government or such officer may deem fit;

(*b*) invest[1] any Government officer, in any department, either personally, or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit:

Proviso.

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

PART II.

Of the Construction and Maintenance of Canals.

Application of Water for purposes of Canals.

Notification when water-supply to be applied for purposes of Canal.

5. Whenever it appears expedient to the Governor in Council that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal, the Governor in Council may, by notification in the Bombay Government Gazette, [2]declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Powers of Entry on Land, etc.

Powers of Canal-officers for purpose of so applying water-supply.

6. At any time after the day so named, any Canal-officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel and do any other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute or employ, such subordinates and other persons as he deems fit.

Entry for inquiry.

7. Whenever it shall be necessary to make any inquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any Canal-officer duly empowered in this behalf, and any person

[1] For notification issued under this section, *see* Bombay Local Rules and Orders.
[2] For such a declaration as to the Khari river and its branches, *see* Bombay Local Rules and Orders.

acting under the general or special order of any such Canal-officer, may—

(*a*) enter upon such land as he may think necessary for the purpose, and

(*b*) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provisions of section 4 of the [1]Land Acquisition Act, 1870, to the effect that land in that locality is likely to be needed for a public purpose, and

(*c*) set up and maintain water-gauges and do all other things necessary for the prosecution of such inquiry and examination.

Power to inspect and regulate water-supply.

8. Any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land, building or water-course, on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

Power to enter for repairs, and to prevent accidents.

9. In case of any accident being apprehended or happening to a canal, any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land adjacent to such canal, and may take trees and other materials, and execute all works which may be necessary for the purpose of preventing such accident or repairing any damage done.

Notice to occupier of building, etc.

10. When a Canal-officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall previously give to the occupier of such building, court or garden such reasonable notice as the urgency of the case may allow.

Canal Crossings.

Means of crossing canals to be provided and obstruction to drainage to be avoided.

11. Suitable means of crossing canals shall be provided at such places as the Governor in Council [2][or any Commissioner if empowered by Government in this behalf] thinks necessary for the reasonable conveni-

[1] *See* now the Land Acquisition Act, 1894 (1 of 1894), Genl. Acts, Vol. IV.

[2] These words were inserted by s. 2, Sch. I, Pt. II, Serial No. 11 of the Bombay Repealing and Amending Act, 1910 (Bom. Act 1 of 1910), Vol. V of this Code.

ence of the inhabitants of the adjacent land; and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.

Removal of Obstructions to Drainage.

Government may prohibit formation of obstructions of rivers, etc., within certain limits.

12. Whenever it appears to the Governor in Council that injury to the public health, or public convenience, or to any canal or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, the Governor in Council may, by [1]notification published in the Bombay Government Gazette, prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or natural drainage-channel, as is comprised within such limits, shall be held to be a drainage-work as defined in section 3.

Canal-officer may issue order to person causing obstruction.

13. Any Canal-officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

Canal-officer may cause obstruction to be removed.

14. If, within the time so fixed, such person does not comply with the order, the Canal-officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land-revenue.

Construction of Drainage-works.

When drainage works are necessary, Government may order scheme to be carried out.

15. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on Canal-officers by sections 7, 8 and 9, and shall be liable to the obligations imposed upon Canal-officers by sections 10 and 34.

[1] For notification prohibiting the construction of bunds or other works in the Pinjari and Sujawat Talukas of the Karachi Collectorate, *see* Bombay Local Rules and Orders.

PART III.

OF WATER-COURSES.

Construction of new Water-courses.

Construction of new water-courses by private arrangement.

16. Any person may, with the permission of a Canal-officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required therefor.

Application for construction by Canal-officer of new water-course.

17. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating—

(1) that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course;

(2) that he desires the said Canal-officer in his behalf and at his cost to do all things necessary for constructing such water-course.

Procedure when Canal-officer considers construction of water-course expedient.

18. If the Canal-officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and upon such deposit being made, shall cause inquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated, for publication on such land.

Application by person wishing to be joint owner.

The said notification shall also call upon any person who wishes to share in the ownership of such water-course to make his application in that respect to the Canal-officer within thirty days of the publication of such notification.

If application admitted, applicant liable for share of cost.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

Collector to acquire land.

19. On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the [1]Land Acquisition

[1] *See* now the Land Acquisition Act, 1894 (1 of 1894), Genl. Acts, Vol. IV.

Act, 1870, as if a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section 17 of the said Act.

Procedure after construction of water-course.

20. On being put in possession of the land, the Canal-officer shall construct the required water-course; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such notice being given, such sum shall be due from the owner to the Canal-officer. On receipt of payment in full of all expenses incurred, the Canal officer shall make over possession of such water-course to such owner.

Rights and Obligations of owners of Water-courses.

Obligations of owner of water-courses.

21. Every owner of a water-course shall be bound—

(*a*) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage-channels and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(*b*) to maintain such water-course in a fit state of repair for the conveyance of water;

(*c*) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section 23;

Rights of owners and users of water-courses.

and every owner of a water-course and every person duly authorized under the provisions hereinafter contained to use a water-course shall be entitled—

(*d*) to have a supply of water by such water-course, at such rates and on such terms, as may from time to time be prescribed under section 44 and by the rules made by the Governor in Council under section 70:

Provided always that any owner of a water-course and, subject to the terms of any agreement between the parties, or to any condition imposed under section 23, any such person as aforesaid may at any time, by giving three months' previous notice in writing in this behalf to a Canal-officer duly empowered to receive such notices, resign his interest in such water-course.

Arrangement with owner.

22. Any person desiring to have a supply of water through a water-course of which he is not an owner may make a private arrangement with

by other person.

the owner for permitting the conveyance of water thereby, or may apply to a Canal-officer duly empowered to receive such applications for authority to use such water-course or to be declared a joint owner thereof.

Canal-officer after inquiry may authorize supply or declare applicant to be joint owner.

23. On receipt of any such application, the Canal-officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

Use of land acquired for water-course for other purpose.

24. No land acquired under this Part for a water-course shall be used for any other purpose without the previous consent of a Canal-officer duly empowered to grant such permission.

If owner fails to execute work or to repair water-course, Canal-officer may execute same.

25. If any owner of a water-course fails to fulfil any obligation imposed upon him by clause (*a*) or (*b*) of section 21, any Canal-officer duly empowered in this behalf may require him by notice to execute the necessary work or repair within a period, to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf, and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to Government.

Persons using water-course to pay share of expenses of repair.

Every person other than an owner who uses any water-course in respect of which any repair has been executed by a Canal-officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section 23 at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said Canal-officer.

Settlement of Disputes concerning Water-courses.

Settlement of disputes as to mutual rights and liabilities of persons interested in water-course.

26. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, or among joint owners of a water-course, as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amounts severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon;

failing such consent, he shall transfer the matter to the Collector, who shall inquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a Civil Court.

PART IV.

Of the Supply of Water.

Applications for Supply.

Water to be supplied on written application,

27. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal-officer duly empowered to receive such applications, in such form as shall from time to time be prescribed by Government in this behalf.

and water may be supplied for purposes other than those of irrigation.

If the application be for a supply of water to be used for purposes other than those of irrigation, the Canal-officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control and measurement of the supply as he shall be empowered by Government to impose in each case.

Provisions as to Supply.

Power to stop water-supply.

28. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

(*a*) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority;

(*b*) whenever and so long as any water-course by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water therefrom;

(*c*) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water;

(*d*) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water;

(*e*) within periods fixed from time to time by a Canal-officer duly empowered in this behalf, of which due notice shall be given.

Duration of supply.

29. When canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

Agreements for supply of water transferable with property in respect of which supply given;

30. Every agreement for the supply of canal-water to any land, building or other immoveable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building or other immoveable property takes place.

right to use of water not transferable in other case without permission of Canal-officer.

No person entitled to the use of any work or land appertaining to any canal, and, except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let, or otherwise transfer, his right to such use without the permission of a Canal-officer duly empowered to grant such permission.

PART V.

Of the Award of Compensation.

Compensation when claimable.

Compensation in cases of ascertainable substantial damage.

31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation:

Exceptions.

Provided that no compensation shall be so awarded in respect of any damage arising from—

(*a*) deterioration of climate, or

(*b*) stoppage of navigation, or the means of rafting timber or of watering cattle, or

(*c*) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 5, if no use have been made of such supply within the five years next before the date of the issue of the notification under section 37, or

(*d*) failure or stoppage of the water in a canal, when such failure or stoppage is due to—

(1) any cause beyond the control of Government,

(2) the execution of any repairs, alterations or additions to the canal, or

(3) any measures considered necessary by any Canal-officer duly empowered in this behalf for regulating the proper

flow of water in the canal, or for maintaining the established course of irrigation;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (*d*) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council. Remission of water-rates when allowable.

32. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period. Limitation of claims.

33. [*Compensation not claimable in respect of works executed prior to Act.*] *Rep. Act XVI of 1895.*

Summary Decisions.

34. In every case of entry upon any land or building under section 6, section 7, section 8, or section 9, the Canal-officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property, Compensation for damage caused by entry on land, etc.

and within one month from the date of such entry compensation shall be tendered by a Canal-officer duly empowered in this behalf to the landholder or owner of the property damaged.

If such tender is not accepted, the Canal-officer shall forthwith refer the matter to the Collector for the purpose of making inquiry as to the amount of compensation and deciding the same.

35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (*d*) of section 31, the holder of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector, after consulting the Canal-officer, shall award to the petitioner reasonable compensation for such loss. Compensation on account of interruption of water-supply.

36. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section 70, such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive. Decision as to amount of compensation under either of last two sections conclusive.

Formal Adjudications.

37. As soon as practicable after the issue of a notification under section 5, the Collector shall cause public notice to be given at convenient places, Notice as to claims for compensation.

In certain cases.

stating that the Government intend to apply or use the water as aforesaid, and that claims for compensation may be made before him.

A copy of sections 31 and 32 shall be annexed to every such notice.

Claims to be preferred to Collector.

38. All claims for compensation under this Act, other than claims of the nature provided for in sections 34 and 35, must be made before the Collector of the district in which such claim arises.

Collector to be guided by provisions of Land Acquisition Act, 1870.

39. The Collector shall inquire into every such claim and determine the amount of compensation, if any, which should in his opinion be given to the claimant; and sections 11, 12, 14, 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51 and 58 of the [1]Land Acquisition Act, 1870, shall apply to such inquiries:

Provided that instead of the last clause of the said section 26, the following shall be read:—

"The provisions of this section and of sections 31 and 40 of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

Diminution in market-value to be considered in fixing compensation.

40. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed;

and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

Compensation when due.

41. All sums of money payable for compensation awarded under section 39, shall become due three months after the claim for such compensation was made;

Interest.

and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Abatements of Land-revenue and Rent.

Abatement of revenue-demand on interruption of water-supply.

42. If compensation is awarded under section 39 on account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining

[1] See now the Land Acquisition Act, 1894 (1 of 1894). Genl. Acts. Vol. IV.

thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

Abatement of inferior holder's rent on interruption of water-supply.

43. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding;

Enhancement of inferior holder's rent on restoration of water-supply.

but, if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value: Provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

PART VI.

Of Water-rates.

Supply Rates.

Determination of rates for supply of canal-water.

44. Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

Provision for cases in which existing water-supply is improved.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue or a fixed amount of revenue has hitherto been paid to Government, is increased, rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

Occasional Rates.

Liability when person using water unauthorizedly cannot be identified.

45. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or, if no land has derived benefit therefrom, the person, or all the persons chargeable in respect of the water-supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section 70.

Liability when water runs to waste.

46. If water supplied through a water-course be suffered to run to waste, and if, after inquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable, or jointly liable, as the case may be, for the charges which shall be made in respect of the water so wasted, under the rule prescribed by the Governor in Council under section 70.

All questions arising under this and the last preceding section shall, subject to the provisions of section 67, be decided by a Canal-officer duly empowered in this behalf.

Charges recoverable in addition to penalties.

47. All charges for the unauthorized use or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

Percolation and Leakage-rates.

Land deriving benefit from percolation liable to water-rate.

48. If it shall appear to a Canal-officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, wherever situate, derives by a surface-flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

49 to 56. [*Protection-rate.*] *Rep. Bom. Act III of 1880.*

Recovery of Water-rates and other Dues in Arrears.

Water-rates when and to whom to be paid.

57. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council [1][or of any Commissioner empowered by Government in this behalf].

[1] These words were added by Sch. I, Pt. II, Serial No. 12 of the Bombay Repealing and Amending Act, 1910 (Bom. Act 1 of 1910), Vol. V of this Code.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a Canal-officer, whether on behalf of Government or of any other person under Part III * *[1] which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue. Arrears to be recoverable as land revenue.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the Canal-officer duly empowered to act under section 23 shall direct, and may be recovered on behalf of the owner according to the law and rules aforesaid: Rent due to owners of water-courses to be recoverable as arrears of land-revenue.

Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person.

PART VII.

Of obtaining Labour for Canals on Emergencies.

58. Whenever it appears to a Canal-officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury, Procedure for obtaining labour for works or repairs urgently required.

or, that unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance or work by labouring thereat as such officer or any person authorized by him in this behalf may direct.

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[1] The words " of this Act " were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), Vol. IV of this Code.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

List of labourers.

59. Subject to such rules as may from time to time be prescribed under section 70 in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Reports to be made by Canal-officer.

60. All orders made under section 58 shall be immediately reported to the Collector for the information of the Commissioner of the Division, and likewise to the Chief Engineer for Irrigation, for the information of Government.

PART VIII.

Of Penalties.

For damaging canal, etc.

61. Whoever voluntarily and without proper authority—

(1) damages, alters, enlarges or obstructs any canal;

(2) interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over or under any canal, or by any means raises or lowers the level of the water in any canal;

(3) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(4) destroys, defaces or moves any land or level mark or water-gauge fixed by the authority of a public servant;

(5) destroys, tampers with, or removes, any apparatus, or part of any apparatus, for controlling, regulating or measuring the flow of water in any canal;

(6) passes, or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to rules made under section 70, after he has been desired to desist therefrom;

(7) causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers or causes or knowingly and wilfully permits cattle to be tethered, upon any such canal or embankment, or roots up any grass or other vegetation growing on any such canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injured, any tree, bush, grass or hedge intended for the protection of such canal or embankment:

(8) neglects, without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance or work, when lawfully bound so to do under section 58;

(9) violates any rule made under section 70 for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred;

and whoever—

(10) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner or prevents or interferes with the lawful use of such water-course by any person authorized to use the same or declared to be a joint owner thereof under section 23;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the [1]Indian Penal Code, on conviction before a Magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment * * *[2] for a term which may extend to one month, or with both.

XLV of 1860.

62. Whoever without proper authority—

For endangering stability of canal, etc.

(1) pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy or endanger the stability of any canal;

(2) opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any canal;

(3) makes any dam or obstruction for the purpose of diverting or opposing the current of a river or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the [1]Indian Penal Code, on conviction before a Magistrate of the first or second class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment [2]* * * * * for a term which may extend to six months, or with both.

XLV of 1860.

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[1] General Acts, Vol. I.

[2] The words "of either description within the meaning of the said Code" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B. This schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), Vol. IV of this Code.

Obstruction to be removed and damage repaired.

63. Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal-officer duly empowered in this behalf may remove such obstruction or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrear of land-revenue.

Persons employed on canal may take offenders into custody.

64. Any person in charge of, or employed upon, any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who within his view—

(1) wilfully damages, obstructs or fouls any canal, or

(2) without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream so as to endanger damage, make dangerous or render less useful any canal.

Saving of prosecution under other laws.

65. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act:

Provided that no person shall be punished twice in respect of one and the same act or omission.

Payment of fine as award to informant.

66. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or if an appeal be presented till after the decision of the appeal.

PART IX.

MISCELLANEOUS.

Appeals against orders under Act.

67. Every order passed by a Canal-officer under sections 13, 18, 25, 30, 45, 46 and 48 shall be appealable to the Collector:

Provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner [1]* * *.

Power to summon and examine witnesses.

68. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil Courts by the [2]Code of Civil Procedure; and every such inquiry shall be deemed a judicial proceeding.

Service of notices.

69. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

Power to make, alter and cancel rules.

70. The Governor in Council may from time to time make [3]rules not inconsistent with this Act to regulate the following matters:—

(*a*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*b*) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;

(*c*) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act, shall be done;

(*d*) the amount of any charge to be made under this Act;

(*e*) and generally to carry out the provisions of this Act.

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[1] The words "of the division" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B. This Schedule is printed as an appendix to the Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), Vol. IV of this Code.

[2] *See* now the Code of Civil Procedure (5 of 1908), Genl. Acts, Vol. VI.

[3] For rules for the administration of canals in the Bombay Presidency, *see* Bombay Local Rules and Orders.

For rules regarding the administration of the Jamrud Canal in Sindh, *see* Bombay Government Gazette, 1901, Pt. I, p. 2540, and *ibid*, 1902, p. 344.

For rules regarding the preparation of list of persons bound to assist on emergencies, *see* Bombay Local Rules and Orders.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelments shall be published in the Bombay Government Gazette, and shall thereupon have the force of law.

Saving of municipal water-works.

71. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake or other collection of water vesting in any municipality.

[1][PART X.

Of Second-class Irrigation Works.

Application of this Part.

72. This Part shall apply to Second-class Irrigation Works only.

Notification of Second-class Irrigation Work.

73. (*1*) The Governor in Council may publish a notification in the Bombay Government Gazette—

(*a*) declaring that it is proposed to constitute any canal, channel, stream, river, pipe or reservoir, natural or artificial, or any part thereof, whether constructed, maintained or controlled by Government or not, which is actually used or required for the purposes of irrigation, a Second-class Irrigation Work;

(*b*) fixing a period of not less than four months from the date of publication of such notification in the Bombay Government Gazette for the submission of objections to such proposal:

Provided that no artificial reservoir or water-course supplied from such reservoir which is actually used for the purposes of irrigation by a single irrigator shall be included in such notification except either with the consent of such irrigator or, if in the opinion of the Governor in Council such inclusion is necessary in the public interests, then without such consent but subject to the payment, after the issue of the declaration mentioned in sub-section (*3*), to such irrigator of such compensation for his rights as may be settled in accordance with the provisions of section 79.

(*2*) After the publication of such notification in the Bombay Government Gazette it shall also be published by the Collector as soon as practicable in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is likely to be affected by such notification.

[1] Part X was inserted by s. 2 of the Bombay Irrigation (Amendment) Act, 1914 (Bom. Act 2 of 1914), Vol. V of this Code.

(*3*) After considering such objections as may have been received within the period fixed as aforesaid the Governor in Council may, by notification in the Bombay Government Gazette, declare such canal, channel, stream, river, pipe or reservoir or any part thereof to be a Second-class Irrigation Work.

Proclamation by the Collector.

74. When a notification has been issued under sub-section (*3*) of section 73 the Collector shall publish in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated, and in every town and village which in his opinion is likely to be affected by such declaration, a proclamation—

(*a*) specifying, as nearly as possible, the source of supply, situation and limits of the Second-class Irrigation Work notified under sub-section (*3*) of section 73;

(*b*) stating that this Part applies to the work so notified from the date of the notification published under sub-section (*3*) of section 73; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right in the work so notified either to present to the Collector within such period a written notice specifying, or to appear before him and state, the nature of such right.

Application of certain sections of the Main Act.

75. (*1*) A Second-class Irrigation Work shall be deemed to be a canal within the meaning of sub-section (*1*) of section 3 and to such work the following sections and Parts only shall, so far as may be, apply, namely:—

Sections 3, 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 30, Part V, Part VIII, except sub-section (*8*) of section 61, and Part IX.

(*2*) The aforesaid sections and Parts shall, for the purposes of this Part, be subject to the following modifications, namely:—

(*i*) In section 16 before the word "any" prefix the words—

"Subject to any rights recorded in the Record-of-rights prepared or revised as hereinafter provided".

(*ii*) In section 17 before the word "any" prefix the words "Subject as aforesaid".

(*iii*) In section 21 for clause (*d*), the following shall be substituted, namely:—

"(*d*) To have a supply of water on such terms as may be prescribed in the Record-of-rights prepared or revised as hereinafter provided."

(*iv*) To section 22 the following proviso shall be added, namely :—

"Provided that no such private arrangement shall affect any rights to water recorded in the Record-of-rights prepared or revised as hereinafter provided."

(*v*) In section 30 for the words "every agreement for" the words "all rights to" shall be substituted, and in the same section after the word "property" the words "which have been recorded in the Record-of-rights prepared or revised as hereinafter provided" shall be inserted. Paragraph 2 of the same section shall be omitted.

(*vi*) In Part V, section 31, proviso clause (*c*) and the last paragraph shall be omitted.

(*vii*) In Part V, section 34, the words "section 6, section 7" shall be omitted.

(*viii*) In Part IX, section 67, after the figures "48" the words "and Part X" shall be inserted.

Framing of Record-of-rights.

76. (*1*) As soon as possible after the expiry of the period fixed by the Collector under section 74, clause (*c*), a Canal-officer duly empowered in this behalf, who shall be a Revenue officer not below the rank of a Mamlatdar, shall inquire into and settle claims to any right in the Second-class Irrigation Work, and shall record the extent of such right and draw up in the form from time to time prescribed by the Governor in Council an Irrigation Record-of-rights so far as the same may be ascertainable from the records of Government and the evidence of any person likely to be acquainted with the same and any other documentary or oral evidence which the parties concerned or their witnesses may produce.

(*2*) Such Record-of-rights shall contain the following matters :—

(*a*) the nature of the Second-class Irrigation Work and any work subsidiary thereto,

(*b*) the lands irrigable therefrom,

(*c*) the custom or rule of irrigation,

(*d*) the rights to water and the conditions on which such rights are enjoyed, and

(*e*) Such other matters as the Governor in Council may by rules prescribe in this behalf.

Powers of Canal-officer.

77. (*1*) For the purposes of the inquiries under section 76 such Canal-officer may enter, by himself or any officer authorised by him for the purpose, upon any land adjacent to any such work, and may survey, demarcate and make a map of the same.

(*2*) Notwithstanding anything contained in section 76 where no sufficient evidence is forthcoming as to all or any of the matters specified in that section such Canal-officer shall, so far as may be, settle and record the aforesaid matters in such manner as he may deem fit.

Revision of Record-of-rights.

78. The Record-of-rights prepared under section 76 may be revised from time to time by a Canal-officer duly empowered in that behalf, who shall be a Revenue officer not below the rank of a Mamlatdar.

Commutation of rights.

79. Where the Canal-officer who has prepared or revised any Record-of-rights under this Part finds that, having due regard to the maintenance or management of the Second-class Irrigation Work, any right contained in the Record-of-rights cannot continue to be exercised to the extent recorded, he shall (subject to such rules as the Governor in Council may from time to time prescribe in this behalf) commute such right wholly or in part, either by the payment to the holder of such right of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he may think fit; and he shall revise the Record-of-rights accordingly.

Power of Government where works are undertaken increasing supply.

80. In the event of Government undertaking at their own cost any work whereby the supply of water in any Second-class Irrigation Work is increased beyond the amount of such supply at the time of preparing or revising the Record-of-rights under this Part the Governor in Council may, without prejudice to any rights so recorded, direct that the right to such surplus water shall vest in Government and shall be applied as Government may deem fit and the Record-of-rights shall be revised in accordance with such direction.

Publication of Record-of-rights.

81. When any Record-of-rights has been prepared or revised under this Part it shall be published in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is affected by such Record-of-rights.

Entries in the Record-of-rights to be relevant as evidence.

82. An entry in any Record-of-rights prepared or revised under this Part shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that no such entry shall be so construed as to limit any of the powers conferred on the Governor in Council by this Part.

Notice of suit to be given to the Collector.

83. (*1*) In any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector, and, if moved to do so by the Collector, shall make the Secretary of State for India in Council a party to the same.

Suits against Government.

(*2*) Save as provided in sub-section (*1*) no suit shall lie against Government in respect of anything done by the Collector, Canal-officer or any other person acting under the orders of Government in the exercise of any power by this Part conferred on such Collector, Canal-officer or other person or on Government.

Period of limitation.

(3) Any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the publication under section 81 of the Record-of-rights containing the said entry; or if one or more appeals have been made against any order of a Canal-officer with reference to any entry in such Record-of-rights, then from the date of any order passed by the final appellate authority, as determined according to this Part.

Obligation to carry out petty repairs.

84. In every Second-class Irrigation Work the following repairs shall be performed by the persons on whom the obligation to perform them is imposed by the next following section, that is to say:—

(1) The filling up of gullies, ruts and holes, especially at the back of revetments, and all petty repairs of a like nature essential for the safety of bunds, of tanks, channel-banks or other portions of the said Second-class Irrigation Work.

(2) The prevention of the growth on such work of prickly pear, young trees and other vegetation endangering the safety or concealing the condition of such work.

(3) The preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such work.

(4) The clearance of silt from sluices, supply and distributing channels.

(5) The clearance of waste weirs and waste channels.

Incidence of obligation.

85. The obligation to perform the repairs prescribed by the last preceding section shall, with reference to any land irrigated from such work, be deemed to be imposed jointly and severally, in the case of unalienated land, on the occupants of the land, and, in the case of all other land, on the holders of the land, as defined in either case in the [1]Bombay Land Revenue Code, 1879. Bom. Act V of 1879.

Power to enforce rights and obligations.

86. If any person on whom any obligation is imposed with reference to any Second-class Irrigation Work by any of the provisions of this Part, fails to fulfil the obligation so imposed, or if any person infringes any right recorded in the Record-of-rights prepared or revised as hereinbefore provided, the Canal-officer may require him by notice to fulfil such obligation or to desist from infringing such right within a period to be prescribed in the notice of not less than fifteen days, and in the event of failure may take such steps as may be necessary for the discharge of the said obligation, or the enforcement of the said right, and the amount of any expense so incurred shall be a sum due to Government and recoverable as an arrear of land revenue.

[1] *Supra.*